District Lodge 727, International Association of Machinists and Aerospace Workers, AFL-CIO (Lockheed-California Company) *and* **Walter C. Milosevich.** Cases 31-CB-4117 and 31-CB-4351

January 12, 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On September 15, 1982, Administrative Law Judge James T. Barker issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the Charging Party filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, District Lodge 727, International Association of Machinists and Aerospace Workers, AFL-CIO, Burbank, California, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT restrain or coerce employees in the exercise of their rights guaranteed by Section 7 of the Act:

By requiring Walter C. Milosevich or any other employee in the collective-bargaining unit of the employees of Lockheed-California Company which we represent, with a seniority date preceding July 24, 1971, and who is not a member of District Lodge 727, International Association of Machinists and Aerospace Workers, to pay a sum of money equivalent to monthly dues and fees pursuant to an unlawful construction of the union-security provision in our collective-bargaining agreement with Lockheed-California Company.

WE WILL NOT cause or attempt to cause Lockheed-California Company to discriminate against Walter C. Milosevich or any other unit employee with a seniority date preceding July 24, 1971, and who is not a member of District Lodge 727, International Association of Machinists and Aerospace Workers, AFL-CIO by seeking or otherwise demanding their discharge for failure to pay sums of money equivalent to monthly dues and fees to District Lodge 727, International Association of Machinist and Aerospace Workers, AFL-CIO, pursuant to an unlawful construction of the union-security provision in our collective-bargaining agreement with Lockheed-California Company.

WE WILL NOT in any other manner restrain or coerce employees of Lockheed-California Company or any other employer in the exercise of the rights guaranteed to the employees in Section 7 of the Act, except to the extent that such rights may be affected by an agreement which is authorized by Section 8(a)(3) of the Act.

WE WILL reimburse Walter C. Milosevich, together with interest, for monthly dues required and collected from him on and after July 30, 1980, as a condition of his continued employment by Lockheed-California Company.

WE WILL notify Lockheed-California Company and Walter C. Milosevich that we have no objection to the employment of Walter C. Milosevich by Lockheed-California Company.

WE WILL notify Lockheed-California Company that we withdraw and retract our February 13, 1981, request that Milosevich be terminated.

DISTRICT LODGE 727, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

DECISION

STATEMENT OF THE CASE

JAMES T. BARKER, Administrative Law Judge: This case was heard before me at Los Angeles, California, on July 13, 1982, pursuant to an order consolidating cases, and consolidated complaint and notice of hearing issued on September 29, 1981, by the Regional Director for Region 31 of the National Labor Relations Board.[1] The charge in Case 31-CB-4117 was filed on March 4 by Walter C. Milosevich, and the charge in Case 31-CB-4351 was filed by Milosevich on August 31. The respective charges were timely served upon Respondent by certified mail. Respondent filed an answer to the consolidated complaint, wherein certain factual allegations of the complaint were admitted, others were denied, and affirmative defenses were interposed. Respondent denies the commission of any unfair labor practices. The General Counsel and Respondent were represented by counsel at the hearing, and Walter Milosevich was accorded an opportunity to participate fully in the hearing. Each of the parties were provided full opportunity to introduce relevant evidence, to examine and cross-examine witnesses, to make opening and closing statements, and to file briefs with me. Each of the parties timely filed briefs.

Upon the entire record in this proceeding, and the briefs filed herein, I make the following:

FINDINGS OF FACT

I. JURISDICTIONAL FACTS

At all times material herein, Lockheed-California Company, herein called Lockheed, has been a corporation duly organized under and existing by virtue of the laws of the State of California, with an office and place of business located in Burbank, California, where it is, and has been at relevant times, engaged in the manufacture and sale of aircraft.

In the course and conduct of its business operations, Lockheed annually sells and ships goods or services valued in excess of $50,000 directly to customers located outside the State of California.

Upon the basis of the foregoing facts, which are not in dispute, I find that, at all times material herein, Lockheed has been an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is undisputed, and I find, that at all times material herein Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

The principal issue in this proceeding is whether Respondent violated Section 8(b)(1)(A) and (2) of the Act by (1) communicating to Milosevich demands that he tender the equivalent of monthly dues to Respondent, (2) by separately demanding that he pay to Respondent dues allegedly owed, and (3) by threatening to request Lockheed to terminate Milosevich if he did not comply with the aforesaid demands; and separately violated Section 8(b)(2) of the Act by demanding, in writing, that Lockheed terminate Milosevich for nonpayment of the equivalent of dues, all at a time when according to the General Counsel Milosevich was not required and had no obligation to pay any initiation fees or periodic dues, or the equivalent thereof, under the provisions of the collective-bargaining agreement.

Respondent contends, in substance, that under the union-security provision of the collective-bargaining agreement, and its predecessor agreements, Milosevich and other employees similarly situated were required to maintain financial core membership in Respondent as a condition of employment, and that Respondent's request that Lockheed terminate Milosevich for nonpayment of dues constituted lawful activity under the Act directed merely to enforcing the valid financial core membership requirement of the agreement, consistent with the Decision in *N.L.R.B.* v. *General Motors Corp.*, 373 U.S. 734 (1963).

Subsidiary issues are raised as to whether (1) documentary evidence reflecting the bargaining history with respect to the union-security provision of the contract is admissible for the purpose of determining the intention of the contracting parties to create an obligation on the part of a certain class or group of employees, of which Milosevich is one, to tender dues and fees for the equivalency thereof; and (2) whether under principles of collateral estoppel the determination must be here reached that the union-security provision of the collective-bargaining agreement was specifically tailored to require the legally permissible financial core membership as a condition of employment, as allegedly determined by the Board in *International Association of Machinists and Aerospace Workers, Lodge 727, AFL-CIO (Lockheed-California Company, A Division of Lockheed Corporation)*, 250 NLRB 303 (1980).

B. *Background Facts*

1. The setting

Walter Milosevich was initially employed by Lockheed on July 21, 1958, and continued to be employed by Lockheed at times relevant herein. Milosevich's seniority date is carried on the personnel records of Lockheed as July 21, 1958.[2]

In the latter part of 1977, and the early part of 1978, Lockheed and Respondent engaged in collective-bargaining negotiations for the purpose of concluding a collective-bargaining agreement to succeed the agreement which had theretofore been in effect. These negotiations culminated in a new agreement being executed on March 22, 1978, which, by its terms, was to be effective for the period from January 1, 1978, until October 1, 1980. Prior to concluding this agreement, however, there was a pro-

[1] Unless otherwise specified, all dates herein refer to the calendar year 1981.

[2] Credited and undisputed evidence of record establishes the foregoing.

longed strike by the employees of Lockheed which began in October 1977. For reasons relating to Respondent's conduct of collective-bargaining negotiations with Lockheed, and matters relating also to a strike settlement agreement achieved with Lockheed relating to the prolonged strike, Milosevich became dissatisfied with Respondent and sought to resign his membership. Respondent's constitution and bylaws contain no provisions which restrains membership resignations as such. Respondent refused to honor Milosevich's request, and Milosevich filed 8(b)(1)(A) charges with the Board culminating in the issuance of a complaint alleging Respondent had violated that provision of the Act by refusing to accept and honor Milosevich's resignation as a member of Respondent. A hearing was conducted before William L. Schmidt, Administrative Law Judge, on December 10, 1979, and on March 12, 1980, Administrative Law Judge Schmidt issued a decision wherein he concluded that by letter dated December 26, 1978, Milosevich conveyed to Respondent a clear intent to no longer remain a member of Respondent. To remedy the violation of Section 8(b)(1)(A) of the Act found by Administrative Law Judge Schmidt to have resulted from the failure and refusal of Respondent to give effect to Milosevich's December 26, 1978, letter of resignation, Respondent was ordered to remove Milosevich's name from its membership rolls and to otherwise modify its records to reflect that Milosevich resigned from membership on or about December 26, 1978.

In reaching his conclusion that a violation of Section 8(b)(1)(A) of the Act had been perpetrated by Respondent, Administrative Law Judge Schmidt discussed and rejected a contention advanced by Milosevich to the effect that his purported resignation in December 1977 had relieved him of any possible financial obligation to Respondent; as well as Respondent's various contentions and defenses, including, *inter alia*, the suggestion that the continuation of formal membership in Respondent is required as a condition of employment under the collective-bargaining agreement. In addressing these contentions and defenses, Administrative Law Judge Schmidt observed at 307:

> As to the Respondent's other contentions, and Milosevich's contentions concerning his dues obligation, I am satisfied that they are, in all respects, without merit. Thus, the language of article I, section 9, of the collective-bargaining agreement appears to be specifically tailored to require only the legally permissible financial core membership as a condition of employment. *N.L.R.B.* v. *General Motors Corporation*, 373 U.S. 734 (1963). Therefore, regardless of when he resigned formal membership in Respondent, Milosevich would have had a dues obligation at least for the period after 30 days following the execution of the collective-bargaining agreement. Since the 30-day period expired long before the effective December 1978 resignation, Milosevich has been obliged to tender the payments required by article I, section 9(2), of the collective-bargaining agreement at all times since his resignation and apparently would have had an obligation even if he had effectively resigned a year earlier. There is no evidence to suggest that Milosevich has not met his financial obligation.

By order dated June 30, 1980, a three-member panel of the Board issued a Decision and Order affirming the rulings, findings, and conclusions of the Administrative Law Judge and adopting his recommended Order requiring Respondent, in pertinent part, to give effect to Milosevich's December 26, 1978, letter of resignation and treat Milosevich as having resigned his membership effective December 26, 1978.[3]

2. The present bargaining relationship

On or about October 20, Lockheed and Respondent entered into a collective-bargaining agreement which is effective by its terms from October 20, 1980, until October 1, 1983. The agreement covers certain employees of Lockheed in an appropriate bargaining unit. At all times material herein, Respondent has been the exclusive representative for the purposes of collective bargaining of the employees in said bargaining unit, including Walter Milosevich.

The 1980 agreement contains at article I, section 9(1) and (2), a union-security provision identical in wording to that contained in the predecessor collective-bargaining agreement effective from January 1, 1978, until October 1980. Section 9(1) and (2) provides as follows:

> (1) Any employee who, on the effective date of this Agreement, is a member of the Union in good standing in accordance with its Constitution and By-Laws, shall pay, *while such employee is within the bargaining unit, is on the active payroll of the Company and is a member of the Union*, membership dues to the Union in accordance with its Constitution and By-Laws, as a condition of employment; and any employee who becomes a member of the Union after such date shall pay, while such employee is within the bargaining unit, is on the active payroll of the Company, and is a member of the Union, an original initiation fee and membership dues to the Union in accordance with its Constitution and By-Laws as a condition of employment provided, however, that in no event shall such initiation fee and membership dues exceed the amounts specified in the Union's Constitution and By-Laws and, provided further, however, that the provisions of this Section 9(1) shall not apply to any employee whose employment is terminated, for any reason other than layoff, during the existence of this Agreement (and who upon rehire, with seniority, does not desire to renew or continue membership in the Union). The terms "initiation fee" and "membership dues" as used in this Section 9(1) shall not include fines, penalties or assessments. [Emphasis supplied.]

[3] These findings are based upon the Board's decision in *International Association of Machinists and Aerospace Workers, Lodge 727, AFL-CIO (Lockheed-California Company, A Division of Lockheed Corporation), supra*, of which official notice is taken.

> (2) Any employee hired or rehired without seniority into the bargaining unit on or after the date of execution of this Agreement shall on the 30th day following the beginning of such employment pay, while such employee is within the bargaining unit and on the active payroll of the Company, an original initiation fee and membership dues to the Union in accordance with its Constitution and By-Laws as a condition of employment. Any employee who is within the bargaining unit and on the active payroll of the Company on the date of execution of this Agreement and who was hired or rehired without seniority during the period commencing July 24, 1971 and ending on the date of execution of this Agreement shall on the 30th day following the execution of this Agreement pay while such employee is within the bargaining unit and on the active payroll of the Company, an original initiation fee and membership dues to the Union in accordance with its Constitution and By-Laws as a condition of employment. The provisions of this Section 9(2) shall not apply to any employee or person who is transferred into the bargaining unit or recalled from layoff status or rehired with seniority to a job within the bargaining unit. The terms "initiation fees" and "membership dues" as used in this Section 9(2) shall not include fines, penalties or assessments.

Milosevich, who had become a member of Respondent on February 1, 1974, effectively resigned his membership from Respondent on December 26, 1978.

One of 38 side letters which are part of the 1980 agreement provides:

> The provisions of article 1, section 9(2) shall not apply to any employee or person who is resigned from the Union during any time when the Agreement was not in effect.

Similarly, a side letter which was a part of the 1978 agreement contained the identical proviso.

C. *The Alleged Unlawful Conduct*

On July 30, 1980, Milosevich dispatched a written request to Lockheed requesting Lockheed to "stop payroll deductions from [his] weekly earnings for the International Association of Machinists and Aerospace Workers, Lodge 727, effective immediately." Milosevich added that he had withdrawn from the Union and the purpose of the payroll deduction had thus been removed. By way of further explanation, Milosevich wrote, "It should be noted that my seniority precedes the date that any further financial responsibility is obligated to the Union by me as a condition of employment under the present contract."

By letter dated August 29, Lockheed's director of industrial relations, R. B. Corlett, acknowledged receipt of Milosevich's request and added:

> Your request dated July 30, 1980, has now been processed and dues deductions have been canceled. Unfortunately, before your request could be processed, dues for the month of August 1980 had already been deducted from your weekly earnings. The Company will, therefore, send you a check in the amount of $19.30 covering this deduction.

Subsequently, on October 7, 1980, Milosevich was advised by Lockheed that through inadvertence a dues deduction had been made for September 1980 and a remittance made to the Union. Milosevich was informed that Lockheed was seeking reimbursement from the Union for August and September 1980 dues which had been inadvertently deducted from Milosevich's earnings.

In the meantime, on August 29, 1980, Merrill Bolton, Respondent secretary-treasurer, dispatched a letter to Milosevich containing the following:

> I have received a copy of an ANVO addressed to Payroll Accounting, in which you canceled the Voluntary Check-Off and Assignment Card, which authorizes the company to deduct the monthly payment of your union dues under Article I, Section 9.3 of the Company-Union Agreement. We have therefore marked your ledger card that you will become a Cash Payer, effective September 1, 1980.
>
> This letter is to make you formally aware that your desire to take care of your obligation to pay your dues personally, places upon you the responsibility to see that your employment will not be placed in jeopardy. Union dues are due and payable the first week of each month, and failure to pay union dues in accordance with the IAM Constitution is a violation of Article I, Section 9, of the Company-Union Agreement, and can result in your termination by the company.
>
> This letter is to accommodate your desires in this matter, but also to make you aware of your obligations, so there is no misunderstanding regarding them.

Thereafter, Milosevich received a letter dated October 14, 1980, signed by R. S. Celebron, president of Respondent, which notified Milosevich:

> Pursuant to and in accordance with a Decision of National Labor Relations Board issued June 30, 1980, this is to advise that District Lodge 727, International Association of Machinists and Aerospace Workers, acknowledges the effectiveness of your resignation from membership dated December 26, 1978.
>
> Accordingly, would you kindly return your IAMAW membership card and dues book so that we may delete your name from our membership records and inform the International of your status.
>
> You are reminded that you are still required to tender and pay regular monthly dues to this Union as a condition of employment pursuant to the Union Security provision in our collective bargaining agreement with Lockheed.

In due course, Milosevich received a subsequent communication from Celebron, dated December 19, 1980. In the letter Celebron advised Milosevich as follows:

Under the Union's Collective Bargaining Agreement with Lockheed, you, as an employee, are required to tender the equivalent of monthly dues as a condition of employment.

You have failed to pay or tender the equivalent of monthly dues and your records indicate that you owe the sum of $57.90, which is computed as follows:

Dues equivalent for October 1980	$19.30
Dues equivalent for November 1980	19.30
Dues equivalent for December 1980	19.30
TOTAL	$57.90

To permit you an opportunity to meet your financial obligations to the Union, you must, within 15 days of the date of this letter, pay the equivalent of your dues arrearage in the amount of $57.90. In the event you do not satisfy this financial obligation on or before 4:30 p.m. Monday, January 5, 1981, the Union will request that the company terminate your employment at the end of that payroll period.

If you wish to pay your financial obligation as a non-member contributor directly to the Union, please come to the Union Hall located at 2600 West Victory Boulevard, Burbank, California during normal business hours any time before 4:30 p.m.

Thereafter, on February 13, 1981, Celebron dispatched a letter to Gerald D. Parker, labor relations manager for Lockheed, wherein Celebron stated:

Under the provisions of the collective-bargaining agreement between Lockheed-California Company and International Association of Machinists and Aerospace Workers District 727, there is included a Union Security agreement under Article I, Section 9.

After much correspondence and discussions with the Labor Relations Department, the National Labor Relations Board, and Mr. Walter C. Milosevich, Employee No. 457669, the Union hereby requests that the Company enforce the provisions of Article I, Section 9, of the Union-Company Agreement, in the case of Walter C. Milosevich, Employee No. 457669, by terminating him for nonpayment of the equivalent of dues as a condition of employment.

Please give this matter your immediate attention.

By letter dated February 27, 1981, Parker responded to Celebron as follows:

This is in response to your letter of February 13, 1981 regarding Walter C. Milosevich, Employee No. 457669.

As you are aware, there is an extensive history surrounding this case involving N.L.R.B. charges, serious concern on the part of Mr. Milosevich and some uncertainty within the Company regarding his present status with the Union. We believe there is also a reasonable uncertainty regarding the meaning of Article I, Section 9, as it relates to a person in Mr. Milosevich's position. Therefore, the Company believes the only prudent course would be to proceed to arbitration on this matter, seeking clarification of the meaning of Article I, Section 9, as it relates to an individual who discontinues his payment of dues following his resignation of membership in the Union.

The Company is prepared to meet with you, or any member of your staff you may designate, in order to select an arbitrator.

No arbitration of this issue occurred.

On March 28, 1981, Milosevich dispatched a letter to Celebron transmitting a money order in the amount of $123.30 which Milosevich characterized as evidencing a "decision to resume payment of membership dues as demanded by [Celebron's] December 19, 1980, letter." In explicit terms Milosevich stated that the remittance was being made in order to prevail upon Celebron not to request the Company to terminate Milosevich's employment. Milosevich added that the remittance "in no way indicates my acceptance of any financial obligation or the lawful existence of such an obligation to the Union."

Subsequently, Milosevich received a notice dated July 6, 1981, advising him that his "union dues" had not been paid for the months of June and July and that to "prevent [his] membership from lapsing" a remittance of $43.60 before July 31, 1981, was necessary.

Thereafter, Celebron dispatched a letter to Milosevich dated August 11, stating:

Under the Union's Collective Bargaining Agreement with Lockheed, you, as an employee, are required to tender the equivalent of monthly dues as a condition of employment.

You have failed to pay or tender the equivalent of monthly dues and our records indicate that you owe the sum of $65.40, which is computed as follows:

Dues equivalent for June 1981	$21.80
Dues equivalent for July 1981	21.80
Dues equivalent for August 1981	21.80
Total	$65.40

To permit you an opportunity to meet your financial obligations to the Union, you must, within 15 days of the date of this letter, pay the equivalent of your dues arrearage in the amount of $65.40. In the event you do not satisfy this financial obligation on or before 4:30 p.m. Wednesday, August 26, 1981, the Union will request that the company terminate your employment at the end of that payroll period.

If you wish to pay your financial obligation as a non-member contributor directly to the union, please come to the Union Hall located at 2600 West Victory Boulevard, Burbank, California, during normal business hours any time before 4:30 p.m.

Conclusions

I find that Respondent violated Section 8(b)(1)(A) of the Act by virtue of the demands which it interposed seeking to require Milosevich to tender dues equivalen-

cies under an unlawful construction of the union-security provision of the current and predecessor 1978–80 collective-bargaining agreement with Lockheed; and additionally and separately violated Section 8(b)(2) of the Act by attempting to cause Lockheed to terminate Milosevich's employment in violation of Section 8(a)(3) of the Act.

Initially, Respondent contends that the union-security provision, particularly paragraph 9(1), specifically sets forth the only exception whereby the employees of Lockheed employed in the unit covered by a collective-bargaining agreement may be relieved of responsibility to pay monthly dues. This exception, asserts Respondent's counsel in his brief, extends only to an employee "whose employment is terminated, for any reason other than layoff, during the existence of [the collective-bargaining] Agreement (and who upon re hire, with seniority, does not desire to renew or continue membership in the Union)." It is Respondent's view that Milosevich does not fit into this specific category and that he was required to maintain a financial obligation to the Union by reason of the expressed language in article I, section 9(1).

At the outset it is clear from the literal language of paragraph 9(1) that its provisions do not reach Milosevich, for his membership in Respondent terminated on December 26, 1978, and at that point and thereafter he no longer was an employee "within the bargaining unit . . . on the active payroll of the Company, *and* . . . a member of the Union" as delineated by paragraph 9(1) as obligated to pay dues. (Emphasis supplied.) This being the case the provisions of section 9(1) lost their force and effect with respect to Milosevich and the exception quoted by Respondent's counsel, insofar as it may be advanced as applying to Milosevich, has no material application. Milosevich was thereafter free to cease paying dues, an option which he invoked on July 30, 1980.[4]

It is Respondent's view, however, that the history of negotiations of the union-security provision of the contract since 1971 discloses an interpretation and application of that provision by the contracting parties requiring all employees, including Milosevich, who became members after July 24, 1971, to remain obligated to tender dues and fees or the equivalent thereof. It is Respondent's further contention that error was committed in excluding documentary proof of this interpretation and practice. Respondent's view and contention must be rejected. Applicable here is the rationale adopted by the Board in *Otis Elevator Company*, 97 NLRB 786, 793 (1951), observing:

> But whatever be contended to be the interpretation of the aforesaid clause of the contract, it cannot avail here, for the Board has held that a union-security provision of a contract relied on to justify discharges must be expressed in clear and unmistakable language, and the interpretation of the parties is not a substitute therefor. [Citing *Don Juan Co., Inc.*, 79 NLRB 209, enfd. in pertinent part 178 F.2d 625 (2d Cir. 1949).]

Similarly, the Board has held that, in view of the extreme consequences that can legally be imposed on a nonconforming employee, parties to a labor agreement are required to express the essentials of union-security provisions in unmistakable language. *Jack Watkins, G.M.C.*, 203 NLRB 632, 635 (1973); *The Iron Fireman Manufacturing Company*, 69 NLRB 19 (1946).[5]

I conclude, therefore, that Milosevich's obligation to remit a dues equivalency covering a period commencing July 30, 1980, and thereafter must be determined from the language of the union-security provision contained in section 9(2) of the current collective-bargaining contract, and the predecessor 1978–80 agreement. I further conclude that nothing in the language of that provision may reasonably be interpreted as requiring Milosevich to remit to Respondent an equivalent of monthly dues as a condition of continued employment. The requirement for the payment of membership dues and initiation fees imposed by section 9(2) is, by its terms, made applicable to employees hired or rehired at times, and under circumstances, having no relevant application to Milosevich. The manifest tenor of Board law and policy, which commands court approval, is the requirement of adequate notification of dues obligation, rendered in clear and unmistakable language, as an element of the requirement of "fair dealing" owed employees under union-security agreements, and in proper deference also to the fact that union-security agreements are exceptions to the general rule against discrimination and carry the potential for drastic consequences to employees who fail to comply with the terms thereof. See, e.g., *Pacific Iron and Metal Co.*, 175 NLRB 604 (1969); *N.L.R.B.* v. *Hotel, Motel and Club Employees' Union, Local 568, AFL–CIO (Philadelphia Sheraton Corp.)*, 320 F.2d 254, 258 (3d Cir. 1963); *N.L.R.B.* v. *Local 182, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America [Associated Transport, Inc.]*, 401 F.2d 509 (1969). The language of the instant union-security provision fails to express in clear and unmistakable language an obligation on the part of employees whose seniority date proceeds July 24, 1971, and who have lawfully resigned or terminated membership in Respondent, to continue to remit during the term of their employment in the bargaining unit a sum of money equivalent to monthly dues and fees. Respondent's interpretation of the requirements of the existing provision is not efficacious and is rejected.

Notwithstanding, Respondent contends, in substance, that during the term of Milosevich's employment, and commencing with the 1978 collective-bargaining agreement, the union-security provision was modified to delete the requirement, theretofore expressed, that employees become and remain members of the Union, while maintaining the continuum of the requirement that dues

[4] Cf. *American Nurses' Association*, 250 NLRB 1324, 1331 (1980). In agreement with Respondent, I find that language contained in a side letter incorporated into the current agreement which permitted employees who resigned their membership and crossed the picket line at Lockheed during the course of a strike in 1977 to be relieved of any dues obligation to Respondent does not apply to Milosevich.

[5] *Pacific and Metal Co.*, 175 NLRB 604 (1969), represents no departure from this principle for the Board therein was dealing with an oral union-security provision the language of which was clear and unmistakable. The Board concluded, "a union-security agreement which is otherwise valid is otherwise not necessarily unlawful in its maintenance or performance merely because its terms are not expressed in writing."

and fees be paid as a condition of employment. See *Lodge No. 1129, International Association of Machinists and Aerospace Workers, AFL-CIO (Sunbeam Appliance Company, Division of Sunbeam Corporation)*, 219 NLRB 1019 (1975). It appears to be Respondent's contention that this change was sufficient to apprise employees, whose tenure of employment and continuity of unit membership spanned these changes, of their obligation to maintain the legally permissible financial core membership as a condition of continued employment. I am not persuaded that precedent and policy requiring the explication of union-security requirements in clear and unmistakable language would impose upon employees the responsibility to interpret the nuances of changed contractual language. Clearly it does not. *International Association of Bridge, Structural and Reinforced Iron Workers Union, Local 378, AFL-CIO (Judson Steel Corporation)*, 192 NLRB 1069, 1075 (1971); *Bay Area Typographical Union Local No. 21, International Typographical Union, AFL-CIO (Northwest Publications, Inc.)*, 218 NLRB 812, 814-815 (1975), cf. *Produce, Refrigerated & Processed Foods & Industrial Workers Local No. 630, etc. (Ralph's Grocery Company)*, 209 NLRB 117, 125 (1974).

But in addition Respondent contends that, by virtue of the litigation and judgment rendered in *International Association of Machinists and Aerospace Workers, Lodge 727, AFL-CIO (Lockheed-California Company, A Division of Lockheed Corporation)*, 250 NLRB 303 (1980), the legally permissible financial core membership requirement of the union-security provision here pertinent has been determined adverse to the position of the General Counsel and Charging Party Milosevich. By extension, it appears to be Respondent's view that the determination rendered in the matter by Administrative Law Judge William L. Schmidt, and affirmed by the Board, has become, in effect, the law of this case. I do not agree. At issue in the prior proceeding was Respondent's insistence upon Milosevich's maintenance of formal membership, and whether Milosevich effectively resigned his membership so as to render violative of Section 8(b)(1)(A) Respondent's refusal to give effect to Milosevich's efforts to resign. In the analytical process of reaching his determination that Milosevich had conveyed a clear intent to no longer remain a member of Respondent, and to thus accomplish an effective resignation of membership, Administrative Law Judge Schmidt observed:

> Thus, the language of article I, section 9, of the collective-bargaining agreement appears to be specifically tailored to require only the legally permissible financial core membership as a condition of employment.

In the context of the issues discussed and decided by Administrative Law Judge Schmidt in his Decision, and the legal issues impliedly essential to Administrative Law Judge Schmidt's determination, the quoted portion of Administrative Law Judge Schmidt's Decision must be treated here as mere dictum. Administrative Law Judge Schmidt specifically found:

> The Respondent has taken no internal disciplinary action against Milosevich for his attempted designation nor had it sought to affect his employment with Lockheed for that reason. Similarly, there is no evidence that Milosevich attempted to revoke his dues-checkoff agreement with Lockheed or otherwise cease meeting his financial obligation to Respondent.

Contentions raised before Administrative Law Judge Schmidt by Milosevich, on the one hand, and Respondent, on the other, with respect to continuity of financial obligation to Respondent, and the maintenance of formal membership, were encompassed within the broad spectrum of evidence confronting Administrative Law Judge Schmidt, but this evidence was tangential and not central to the issues framed by the complaint which the General Counsel issued, litigated, and sustained in a decision of the Board. In the circumstances, I find that Decision serves neither as collateral estoppel nor *res judicata* to the issues posed in the case before me.

I conclude, therefore, that the union-security provision of the collective-bargaining agreement governing the financial obligation of unit employees to Respondent, their collective-bargaining representative does not obligate employees who have effectively and lawfully resigned membership in Respondent, to maintain a financial core membership as a condition of employment. More specifically, I find that Milosevich's date of employment and seniority date preceded July 24, 1971; that Milosevich resigned his membership effective December 26, 1978; that effective July 30, 1980, Milosevich canceled his dues-checkoff authorization; that the union-security provision of the collective-bargaining agreements which has been in effect at times pertinent herein does not and has not obligated Milosevich to pay a sum of money to Respondent equivalent to monthly dues and fees as a condition of continued employment with Lockheed; and that since August 1, 1980, Milosevich has neither possessed nor incurred any legal obligation to remit membership dues and fees, or the equivalent thereof, to Respondent. Milosevich incurred no obligation, contractual or equitable, to pay a dues equivalency as a condition of employment by virtue of his remittance of a sum of money in payment of dues on March 28, 1981, for the specific purpose of protecting his employment interests in the face of an unlawful demand on the part of Respondent that he meet his financial obligation. Cf. *Holmes Transportation, Inc.*, 203 NLRB 253, 256 (1973).[6]

I further conclude and find that, by virtue of its December 19, 1980, and July 6 and August 11, 1981, demands Milosevich tender the equivalent of accrued monthly dues, Respondent engaged in conduct in viola-

[6] I have carefully considered the contentions raised by Milosevich, implicitly at the hearing through the proffer of documentary evidence in the form of exhibits which were rejected, and in his brief, urging, in effect, that the scope of the instant proceeding should be substantially broaden to accommodate consideration of evidentiary material, legal issues, and remedial requirements beyond those encompassed in the instant consolidated complaint, and the theory in support thereof urged by the General Counsel in the proceeding before me. Upon careful analysis of the record, I am of the opinion that the proffered evidence was properly rejected, and the issues herein decided are the only issues properly before me. The recommended remedial action ordered *infra* is believed appropriate in the premises.

tion of Section 8(b)(1)(A) of the Act. Moreover, I further find that Respondent violated Section 8(b)(2) of the Act by its February 13, 1981, demand that Lockheed enforce the union-security provision of the collective-bargaining agreement by terminating Milosevich for nonpayment of the equivalent of dues. This demand coupled with Respondent's unlawful construction of the union-security provision constituted an attempt to cause Lockheed to violate Section 8(a)(3) of the Act, and is proscribed by the statute. See *Local 140, Bedding, Curtain & Drapery Workers Union (The Englander Company, Inc.)*, 109 NLRB 326 (1954); *Spector Freight System, Inc.*, 123 NLRB 43 (1959).

Upon the foregoing findings of fact, the briefs of the parties, and the entire record, I make the following:

CONCLUSIONS OF LAW

1. Lockheed-California Company is an employer within the meaning of Section 2(2) of the Act, engaged in commerce and in an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.
2. District Lodge 727, International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. Since on or about October 20, 1980, and at earlier times, including the period January 1, 1978, to October 20, 1980, Respondent and Lockheed have been parties to a collective-bargaining agreement containing a union-security provision and extending recognition to Respondent as the exclusive representative for the purposes of collective bargaining of employees in an appropriate bargaining unit, including Walter C. Milosevich.
4. Walter C. Milosevich was employed by Lockheed on July 21, 1958, with seniority dating from the date of employment; became a member of Respondent on February 1, 1974; and effectively resigned his membership from Respondent on December 26, 1978.
5. The collective-bargaining agreement between Respondent and Lockheed contains no provision requiring employees of Lockheed employed in the collective-bargaining unit represented by Respondent with seniority date preceding July 24, 1971, who have effectively resigned membership in Respondent, to remit to Respondent, after the effective date of resignation from Respondent, a sum equivalent to monthly dues and fees.
6. On July 30, 1980, Milosevich canceled his dues-checkoff authorization.
7. By demanding after July 30, 1980, that Milosevich pay to the Union amounts equivalent to monthly dues and fees, as a condition of his continued employment with Lockheed, Respondent engaged in conduct in violation of Section 8(b)(1)(A) of the Act.
8. By demanding on February 13, 1981, that Lockheed terminate Milosevich's employment for nonpayment of the equivalent of dues as a condition of employment, Respondent attempted to cause Lockheed to engage in conduct in violation of Section 8(a)(3) of the Act, and did thereby violate Section 8(b)(2) of the Act.
9. The aforesaid unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, it shall be recommended that Respondent cease and desist therefrom and take certain affirmative action necessary to effectuate the purpose and policies of the Act.

Having found that Respondent has engaged in conduct in violation of Section 8(b)(1)(A) and (2) of the Act, arising from Respondent's unlawful construction of the union-security provision of the current and precedessor collective-bargaining agreement between it and Lockheed, I shall recommend that Respondent reimburse Walter C. Milosevich for the sum of money remitted by him to Respondent on March 28, 1981, in partial satisfaction for earlier demands made upon Milosevich by Respondent. I shall further recommend that Respondent notify Lockheed, in writing, that it has no objection to the continued employment of Walter C. Milosevich, and that it specifically withdraw, retract, and seek nullification of its February 13, 1981, request that Lockheed "enforce the provisions of article I, section 9, of the Union-Company agreement" by terminating Milosevich for nonpayment of the equivalent of dues as a condition of employment. The sum reimbursed shall include interest from July 30, 1980, as set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962); and *Florida Steel Corporation*, 231 NLRB 651 (1977).

As there exists a linkage and intimate relationship between the type of violations here found to have been perpetrated by Respondent, and the violation of Section 8(b)(1)(A) of the Act adjudicated and found by the Board arising out of the efforts of Walter C. Milosevich to terminate his membership in Respondent, I shall recommend a broad order. I shall also recommend a notice posting procedure designed to reach and command the attention of employees of Lockheed who are not members of Respondent, but are employed in the bargaining unit represented by Respondent, as well as members of Respondent employed in the bargaining unit.

Upon the foregoing findings of fact and conclusions of law, and the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[7]

The Respondent, International Association of Machinists and Aerospace Workers, Lodge 727, AFL-CIO, Burbank, California, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Requiring Walter C. Milosevich or any other unit employee with a seniority date preceding July 24, 1971, and who is not a member of Respondent, to pay dues equivalencies to it pursuant to an unlawful construction of the union-security provision of the collective-bargain-

[7] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

ing agreement effective, by its terms from October 20, 1980, until October 1, 1983, or the predecessor agreement effective from January 1, 1978, until October 1, 1980.

(b) Causing or attempting to cause Lockheed-California Company to discriminate against Walter C. Milosevich or any other employee in the collective-bargaining unit herein relevant and found appropriate, with a seniority date preceding July 24, 1971, and who is not a member of Respondent, by seeking that employee's discharge for failure to pay dues equivalencies to Respondent pursuant to an unlawful construction of the union-security provision of the current contract, above described, or the predecessor collective-bargaining agreement.

(c) In any other manner restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, except to the extent that such rights may be affected by an agreement which is authorized by Section 8(a)(3) of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Reimburse Walter C. Milosevich for the $123.30 which he was required to remit to Respondent and which Respondent collected from him on March 28, 1981, together with interest thereon from the remittance date, calculated in the manner set forth in the section herein entitled "The Remedy."

(b) Forthwith, notify Lockheed-California Company, in writing, that Respondent has no objection to the employment of Walter C. Milosevich, and communicate to Lockheed-California Company, in writing, that Respondent withdraws and retracts its February 13, 1981, request that Milosevich be terminated.

(c) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all books and records necessary to finalize and give effect to the dues reimbursement and notification requirements specified herein.

(d) Provide a copy of the aforesaid notice and/or written communication or communications specified in 2(b), above, to Walter C. Milosevich.

(e) Post at its offices and meeting places, and on the bulletin boards on the premises of Lockheed-California Company at which Respondent customarily posts notices relating to unit employees, copies of the attached notice marked "Appendix."[8] Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Deliver to the Regional Director for Region 31 signed copies of the notice for posting by Lockheed-California Company, Lockheed willing, at its Burbank, California, facility, at places where notices to employees in the unit represented by Respondent are customarily posted.

(g) Notify the Regional Director for Region 31, in writing, within 20 days of the date of this Order, what steps Respondent has taken to comply herewith.

---

[8] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."